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August 3, 1983

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Mrs. Alice C. Hallenborg, Executive Director
Real Estate Commission
3 Capitol Street
Concord, New Hampshire 03301

Dear Mrs. Hallenborg:

This letter is in response to your letter of July 19, 1983 requesting an opinion concerning the exemption from a real estate broker's or salesman's license included in Chapter 230 of the Laws of 1983 for the sale of manufactured housing.

It is our opinion that any person who sells manufactured housing must have a real estate broker's or salesman's license unless that person is an owner or operator of a manufactured housing park, or one of his employees, or a person exempted under RSA 331-A:2, such as an owner, purchaser, attorney, auctioneer, etc.

Chapter 230 amended the definition of real estate as it is applied to the New Hampshire statutes in general to include manufactured housing as defined in RSA 31:118. See RSA 21:21, II as inserted by 1983, 230:1. Chapter 230 also amended RSA 31:118 to read as follows:

"Manufactured Housing Defined. The term 'manufactured housing' shall mean any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a

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permanent foundation when connected to required utilities, which include plumbing, heating and electrical systems contained therein."

In your letter, you inquired as to when the housing unit becomes manufactured housing, and thus real estate. You noted the language "when connected to required utilities" as possibly indicating the point at which the unit becomes real estate.

In answering your question, it is important to note the language of RSA 31:118, which includes a general description of manufactured housing and then adds the phrase "and designed to be used as a dwelling unit ... when connected to required utilities ..." The language concerning connection to required utilities must be read in the context of the words concerning design of the unit and as modifying those words, not as establishing the point at which a unit becomes manufactured housing. Therefore, if the unit is designed to be used as a dwelling unit when it is connected to utilities and that unit meets the other requirements of the definition, it qualifies as manufactured housing whether or not it is in fact connected to utilities. We see no other way of reading that language. Moreover, in light of the other language in the definition describing a "structure, transportable in one or more sections" and "in the traveling mode," it would make no sense to interpret the definition as attaching only at the point when utilities are connected.

As you also pointed out, Chapter 230, section 7 included a provision which states that for the purposes of the transfer tax, manufactured housing will be deemed to be real estate at the time it is placed on the site and tied into required utilities. Since no such provision was added to the licensing statute, we must assume that there was no similar intent for the purposes of real estate licenses.

RSA 331-A:3 prohibits any person from engaging in the business of a real estate broker or salesman without first obtaining a license. A broker is generally defined as a person who negotiates the sale of real estate and a salesman as a person who works for the broker and who participates in any of the activities of a broker. RSA 331-A:1(b) and (c). Thus, since the legislature has now included manufactured housing in the definition of real estate, any person who sells manufactured housing must first obtain a license unless he is otherwise exempted.

Although RSA 331-A:1(a), the definition of "real estate" for the purposes of RSA 331-A, was not amended by Chapter 230,

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the general definition of "real estate" cited above was changed to include manufactured housing. Moreover, since an exemption provision making specific reference to manufactured housing was placed in the licensing statute, we must assume the legislature would not have felt the need to provide an exemption unless they intended the provisions of RSA 331-A to apply to the sale of manufactured housing.

Chapter 230, section 13 added the following exemption provision to the licensing chapter:

"331-A:10 Sales of Manufactured Housing by Park Owners. Notwithstanding any other provision of this chapter to the contrary, any person owning or operating a park, including his regular employees, in which manufactured housing to be sold or leased is located, may, for a fee or commission or other valuable consideration, list, sell, purchase, exchange or lease such manufactured housing without a license of a broker or salesman."

It is interesting to note that the version of RSA 331-A:10 passed by the House included the following language:

"... any person primarily engaged in the business of selling manufactured housing, as defined by RSA 31:118, or acting as a broker in the sale of manufactured housing for others or operating a park in which manufactured housing is located, may, for a fee or commission or other valuable consideration, list, sell, purchase, exchange or lease manufactured housing without a license of a broker or salesman."

House Record for April 26, 1983, at p. 1939.

The language exempting a person engaged in selling manufactured housing or acting as a broker of manufactured housing for others was removed by the Senate. See Senate Journal, May 24, 1983 at p. 446. The Senate instead adopted the version of RSA 331-A:10 cited above which appears in Chapter 230.

In light of the language of the act itself, as well as the legislative history, we must assume that the only persons selling manufactured housing whom the legislature intended to exempt from the broker's or salesman's license requirement are those listed specifically in RSA 331-A:10 as inserted by Chapter 230 and in RSA 331-A:2, which was not amended by Chapter 230.

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Please let me know if you have any further questions.

Sincerely,

Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

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